

Guide on the New Place of Supply of Services Rules

Introduction:

The new place of supply of services rules in the VAT Act (Chapter 406 of the Laws of Malta) are transposed from Council Directive 2008/8/EC of 12 February 2008 (commonly referred to as the VAT Package) which amend Council Directive 2006/112/EC (the VAT Directive).

Articles mentioned in this paper refer to articles in the VAT Act (Chapter 406 of the laws of Malta).

What is this document about?

This document is aimed to serve as a guide to make you understand better the new place of supply of services rules so as to ensure correct application.

As regards the legal text the relative provisions are mainly to be found in Part Two of the Third Schedule to the VAT Act, as amended by Legal Notice 133 of 2009 published on 24 April 2009.

Most of the new rules come into effect on 1 January 2010 with the remaining coming into force in stages on 1 January 2011, 1 January 2013 and 1 January 2015.

Which services fall under the new rules?

In effect any service supplied to a customer or acquired from a supplier who is not established in Malta may fall under the new rules. The new rules make provision for determining the place where a service is considered to take place and **therefore where the service is to be taxed**, if the case. In most cases services would be taxed under the so-called **general rule** but there are a number of exceptions where **specific rules** apply.

What do I need to know?

If you provide or acquire a service in the circumstances described above you need to know about the **general rule** and the **specific rules** as well as what is meant by a **taxable person** and a **non-taxable person**. You would need to know about **recapitulative statements**. If you are not a taxable person registered under article 10 you may also need to know about new **registration requirements** as a result of receiving or supplying services.

Who could be termed as a taxable person?

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If you provide a service in the circumstances referred to above you would need to know whether your customer is a **taxable person** as this would determine whether you tax the supply.

For the purposes of applying these rules a **taxable person** is a person or entity doing any economic activity, whether such activity is taxable or not for VAT purposes. It includes also **non-taxable legal persons identified for VAT purposes**, i.e. already registered for VAT under article 12.

Who could be termed as a non-taxable person?

A **non-taxable person** is a person who is not a taxable person and who is not a non-taxable legal person identified for VAT purposes. It shall, however, include a non-taxable legal person who is not identified for VAT purposes.

How is the General Rule applied to determine the place of supply of a service?

The general rule determines where the service is to be taxed, if the case. The rule essentially takes into consideration whether the customer is a taxable person or a non-taxable person.

The place of supply of services to a **taxable person** acting as such shall be **the place where the customer is established** (referred to as B2B supplies)

The place of supply of services to a **non-taxable person** shall be **the place where the supplier is established** (referred to as B2C supplies)

Which services do not fall under the general rule?

In case you provide or receive any of the following services the place of supply is in each case determined by a **specific rule**.

→ **Services by intermediaries**

In the case of a **supply of a service by an intermediary** rendered to a **non-taxable person** where the intermediary is acting in the name and on behalf of another person the place of supply shall be **the place where the underlying transaction is supplied**.

→ **Services connected with immovable property**

For a **supply of services connected with immovable property** including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, the

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place of supply shall be **the place where the immovable property is located.**

→ **Services of passenger transport, transport of goods, intra-Community transport of goods**

For a **supply of passenger transport** the place of supply shall be **the place where the transport takes place**, proportionate to the distances covered.

For a **supply of the transport of goods**, other than the intra-Community transport of goods, rendered to **non-taxable persons** the place of supply shall be **the place where the transport takes place**, proportionate to the distances covered.

The place of supply consisting in the intra-Community transport of goods to **non-taxable persons** shall be **the place of departure** of the goods.

→ **Cultural, artistic, sporting, scientific, educational, entertainment and similar services, ancillary transport services and valuations of and work on movable property**

The place of supply of services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organisers of such activities, shall be **the place where those activities are physically carried out**

The place of supply of the following services to **non-taxable persons** shall be the **place where the services are physically carried out:**

- (a) ancillary transport activities such as loading, unloading, handling and similar activities;
- (b) valuations of and work on movable tangible property.

→ **Supply of restaurant and catering services**

The place of supply of restaurant and catering services other than those physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be **the place where the services are physically carried out.**

→ **Hiring of means of transport**

The place of short-term hiring of a means of transport shall be **the place where the means of transport is actually put at the disposal of the customer.**

By "**short-term**" is meant the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than ninety days.

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→ **Supply of restaurant and catering services for consumption on board ships, aircraft or trains**

The place of supply of restaurant and catering services which are physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be **at the point of departure of the passenger transport operation.**

“section of a passenger transport operation effected within the Community” means the section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation.

“point of departure of a passenger transport operation” means the first scheduled point of passenger embarkation within the Community, where applicable after a stopover outside the Community.

“point of arrival of a passenger transport operation” means the last scheduled point of disembarkation within the Community of passengers who embarked in the Community, where applicable before a stopover outside the Community.

In the case of a return trip, the return leg shall be regarded as a separate transport operation.

→ **Supply of electronic services to non-taxable persons**

The place of supply of electronically supplied services when rendered to a non-taxable person in Malta by a taxable person established outside the EU shall be the place where the non-taxable person is established or usually resides (Malta).

“electronically supplied services” include services relating to website supply, web-hosting, distance maintenance of programs and equipment, supply of software and updating thereof, supply of images, text and information, and making available of databases, supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events, and the supply of distance teaching.

→ **Supply of certain services to non-taxable persons outside the Community**

The place of supply of the following services to a **non-taxable person** who is established outside the EU shall be **the place where that person is established.**

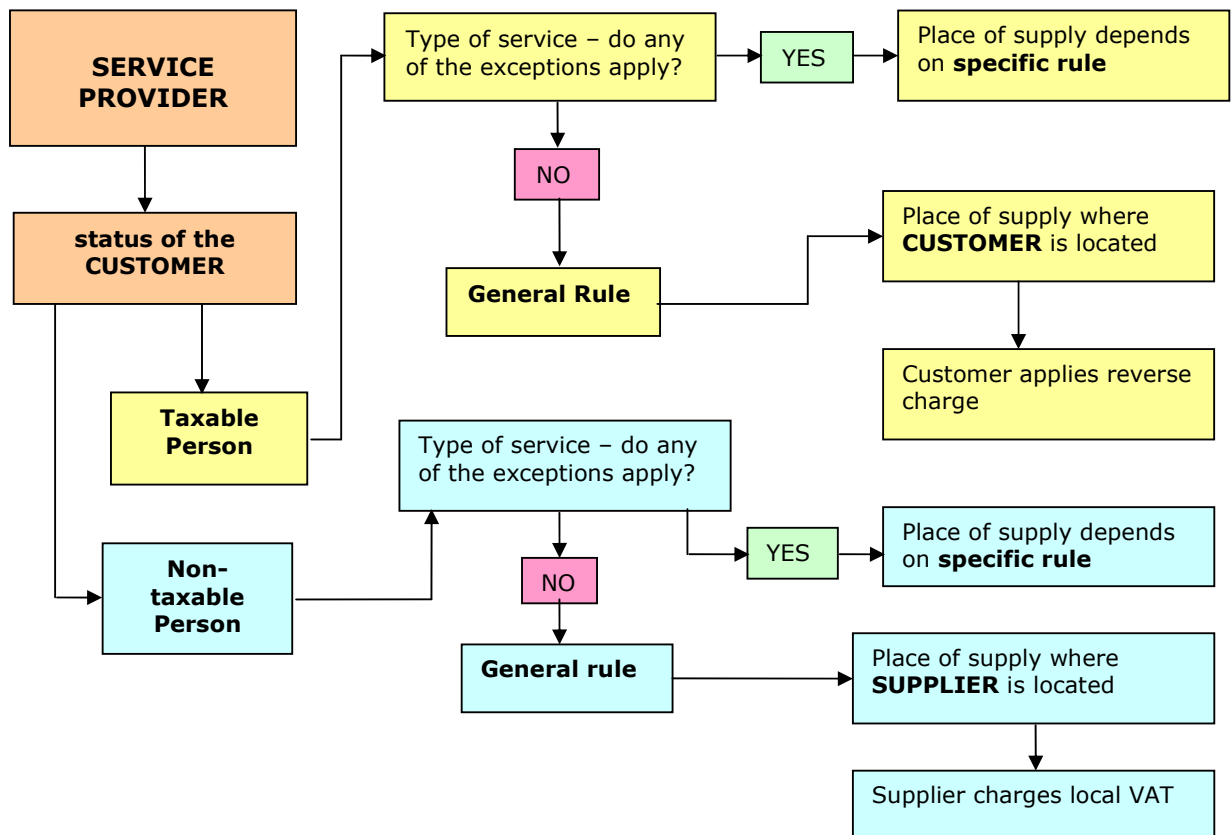
- transfers and assignments of copyrights, patents, licences, trade marks and similar rights
- advertising services

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- the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information
- obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this item banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes
- the supply of staff
- the hiring out of movable tangible property, with the exception of all means of transport
- the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto
- telecommunications services
- radio and television broadcasting services
- electronically supplied services

How shall I determine where the service is to be taxed?

The following flow-chart should help you determine this:



What is meant by the person liable to pay the VAT?

When as a taxable person or a non-taxable legal person (identified for VAT purposes) you acquire a service rendered by a supplier who is not established in Malta (both EU and non-EU) and on the basis of the general or any one of the specific rules the place of supply of that service is determined to be in Malta, you would be **the person liable to pay the VAT** on that service.

What shall I do when I am the person liable to pay the VAT?

If you are a **taxable person registered under article 10** you may apply the **reverse charge** provided you are entitled to claim the input VAT relative to that purchase. You would also be required to account for these transactions in your VAT records and to declare them in your VAT return.

If you are a **taxable person who is not registered under article 10** you would be required to register under article 12 (unless you are already registered). The VAT due shall be paid to the VAT Department on the relative Notice of Payment of VAT Form (Form 004/2010). You would also be required to keep a record of these transactions and report them on the prescribed declaration (Form 005/2010)

If you are a **non-taxable legal person registered under article 12** you shall pay the VAT due to the VAT Department on the relative Notice of Payment of VAT Form (Form 004/2010). You would also be required to keep a record of these transactions and report them on the prescribed declaration (Form 005/2010)

When shall I account for or pay the VAT?

If you are a person registered under article 10 you should account for these transactions, if applicable by reverse charge, in the corresponding tax period when the tax becomes chargeable.

If you are a person registered under article 12 you are required to pay the VAT the earlier of either the fifteenth day of the second month next following the date of invoice or of the month during which the service is received.

What information shall I furnish to the supplier?

If you are a taxable person (or a non-taxable legal person identified for VAT purposes) and you are purchasing a service from a supplier who is not established in Malta then you would be required to furnish to that supplier the VAT number issued to you by the VAT Department.

You are reminded that only VAT numbers issued under article 10 and article 12 would be valid for such transactions.

What records am I obliged to keep?

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If you are a taxable person registered under article 10 you are already required to keep records of all business transactions in terms of article 48.

If you are registered under article 12 you are required to keep records in sufficient detail as to enable the determination of the value of the purchases by you in Malta pursuant to article 20(2).

These records should include a description of the services and the consideration paid, the relative invoices and all other supporting documents.

Are there any Registration obligations as a result of the new rules?

If you are a taxable person established in Malta and you are not registered under article 10 or under article 11 and you supply services within the territory of another Member State for which the tax is payable solely by the recipient of the service you would be required to register under article 10 within 30 days from the date on which you make a supply for a consideration.

If you are a taxable person established in Malta other than a taxable person registered under article 10 and you receive services for which you are liable to pay the tax pursuant to article 20(2) you shall apply to be registered under article 12 by not later than the date on which you receive a service. There is no purchases threshold for the purpose of this registration obligation.

What are my obligations, if any, regarding Recapitulative Statements?

As a taxable person you would be required to submit a recapitulative statement to the VAT Department whenever you supply services deemed to take place in other Member States to persons identified for VAT in those Member States.

If you are a taxable person providing such services you are advised to refer to the guide on 'The New Rules for Recapitulative Statements' available on this website.

DISCLAIMER

Please be aware that the above notes are published for information purposes and as guidance for further exploration. Utmost care has been taken to ensure that the information given is correct. This notwithstanding it is to be pointed out that they are not legally binding and should not serve as a legal document providing legally binding rulings. If you require further information you are advised to either refer to the legal text or contact the VAT Department.